IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl.Appeal No.382-DB of 2001

Date of Decision: November 11,2009

Ved Parkash, Jamna Devi and Santosh

.....Appellants

v.

State of Haryana.

.....Respondent

CORAM: HON'BLE MR.JUSTICE MEHTAB S.GILL
HON'BLE MR.JUSTICE RAM CHAND GUPTA

Present: **Mr.S.K.Yadav, Advocate**
for the appellants.

Mr.S.S.Randhawa, Additional Advocate General, Haryana.

.....

RAM CHAND GUPTA, J.

1. The present appeal has been filed against judgment of conviction dated 25.7.2001 and order of sentence dated 28.7.2001 passed by the Court of then Additional Sessions Judge, Rewari, vide which present appellants-accused were convicted for offences under Sections 302, 498-A read with Section 34 of the Indian Penal Code (hereinafter to be referred as `IPC') and sentenced to undergo imprisonment for life for offence under

Section 302/34 IPC. Accused Jamna Devi and Santosh were also sentenced to pay fine of Rs.20,000/- each, failing which to further undergo rigorous imprisonment for a period of two years each, whereas Ved Parkash was sentenced to pay fine of Rs.5,000/- and, in default of payment of fine, to further undergo rigorous imprisonment for a period of one year. All the accused were also sentenced to undergo imprisonment for a period of one year and to pay fine of Rs.1000/- each, and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months each under Section 498-A IPC. However, all the sentences were ordered to run concurrently.

2. Smt.Mamta (deceased) was daughter-in-law of Jamna Devi-accused and sister-in-law of Santosh-accused, whereas Ved Parkash-accused is her brother-in-law. She sustained about 100% burns in the house of her in-laws on 3.10.1999 at about 3.00 p.m. and as per case of prosecution she was set on fire by all the three accused in furtherance of their common intention and that they also used to harass and used to treat her with cruelty.

3. After the occurrence, Smt.Mamta (deceased) was taken to Civil Hospital, Bawal by her husband Madan Lal and however, she was referred to General Hospital, Rewari at about 4.10.p.m. for further treatment as she was having 100% burns. Smt.Mamta was then taken to General Hospital, Rewari and, however, she was referred to Post Graduate Institute of Medical Science, (hereinafter to be referred as `PGIMS') Rohtak, where she was got admitted by her husband.

4. Medico legal examination of Smt.Mamta was conducted in

PGIMS, Rohtak, vide Ex.PE/1 in the presence of her husband Madan Lal and her mother Smt.Chanderkanta at 7.50 p.m. and she stated before the Medical Officer that she received burns by pouring of kerosene by her mother-in-law and sister-in-law at her residence at 3.00 p.m. on 3.10.1999.

5. After receipt of Ruqa Ex.PA, Jagat Raj, Assistant Sub Inspector of Police Station Bawal had visited the General Hospital Rewari, However, he was informed that the patient was referred to PGIMS Rohtak and hence, he reached PGIMS Rohtak and gave application Ex.PF to the Medical Officer and obtained his opinion Ex.PF/1 that the patient was fit to make statement and he recorded his statement Ex.PG at about 10.00 p.m., on which he made endorsement Ex.PG/1 and sent the same to the police Station for registration of FIR, on the basis of which formal FIR Ex.PG/2 was recorded at 1.30 a.m. on 4.10.1999 and the special report reached the Judicial Magistrate Ist Class, Rewari at about 10.00 a.m. on 4.10.1999. Smt.Mamta (deceased) wife of Madan Lal, aged about 24 years, Caste Chugh, resident of Mohalla Hasanpura, Bawal, got recorded her statement vide Ex.PG with Jagat Raj, ASI on 3.10.1999 at about 10.00 p.m. and the same reads as under:

> "I am a resident of above address. I am a house wife. I was married with Madan Lal s/o Daulat Ram, Mohalla Hasanpura, Bawal, about six years ago. Till date, I could not bear a child. Just after the marriage, my mother-in-law, sister-in-law (Nanad) and brother-in-law (Jeth) used to harass me and started taunting me since just after one year of marriage that I am **Banjh** (barren) and that I am unable to bear a child and that I am **Badmash** (characterless) and as to why I be not die. Since I could not bear a child, so they used to harass me. Today, i.e., on 3.10.1999 at about 3.00 p.m., my mother-in-law-

> Jamna Devi, sister-in-law- Santosh and brother -in-law -Ved Parkash had come to me together and my sister-in-law-Santosh and mother-in-law-Jamna Devi jointly poured kerosene oil on me and set me on fire. I was burnt and nobody tried to rescue me. Lateron I was got admitted in civil Hospital, Bawal by my husband Madan Lal and from there I was brought to Rewari and from Rewari to PGIMS Rohtak. Now you have come. I got my statement recorded and I have heard the same, which is correct."

6. Thereafter the ASI approached learned Duty Magistrate, Rohtak, for recording the statement of Smt.Mamta. Mrs. Shalini Nagpal, the then learned Judicial Magistrate Ist Class, Rohtak-PW4, visited PGIMS Rohtak, on application of police Ex.PC, on which she passed order Ex.PC/1. Dr.Kul Bhushan was on duty. She passed orders Ex.PC/2 to obtain opinion of doctor as to whether Smt.Mamta was fit to make the statement and the doctor gave his opinion Ex.PC/3 declaring Smt. Mamta fit to make the statement. She passed another order Ex.PC/4 asking the relatives, other attendants and the police to clear the room and, thereafter she recorded the statement of Smt.Mamta on oath, which is Ex.PC/5. The statement was read over to her and she thumb marked the same, after admitting the same to be correct. The doctor also remained present throughout the time the statement of Smt.Mamta was recorded, who also certified vide Ex.PC/6 that the patient remained fit throughout the time her statement was recorded. Learned Magistrate also gave certificate Ex.PC/7 after recording the statement of Smt.Mamta.

7. In statement Ex.PC/5 Smt.Mamta(deceased) stated before learned Magistrate that occurrence had taken place at about 3.00 p.m.

yesterday and that she was married about six years ago. She further stated that her mother-in-law and sister-in-law used to taunt her that she was characterless and as to why she be not die and that they also used to harass her as she was unable to bear a child. She further stated that her mother-in-law Smt.Jamna Devi, sister-in-law Smt.Santosh and brother-in-law Ved Parkash used to harass her and that her mother-in-law and sister-in-law set her on fire by pouring kerosene oil on her body. She further stated that her husband never used to harass her.

8. Smt.Mamta succumbed to burn injuries and hence offence under Section 302 IPC was added. Post mortem examination on the dead body of Smt.Mamta was got conducted. The accused was arrested by Bhagat Singh, SI, on 7.10.1999. After completion of the investigation, report under Section 173 Cr.P.C. was filed against all the three accused.

9. Case was committed to the Court of Sessions by the then learned Judicial Magistrate Ist Class, Rewari, vide order dated 6.12.1999, after supplying the copy of challan and accompanying documents to the accused, as required under Section 207 Cr.P.C.

10. Learned Additional Sessions Judge, Rewari, charged all the accused for offences punishable under Sections 302/498 read with Section 34 IPC, to which they did not plead guilty and claimed trial.

11. In order to substantiate the allegation against the accused the prosecution has examined as many as 14 witnesses.

12. PW1 is Dr.A.S.Dahiya, the then Medical Officer, CHC, Bawal, who examined Smt.Mamta (deceased) when she was brought to Civil Hospital, Bawal by her husband Madan Lal and who sent Ruqa Ex.PA to the

police Station and referred her to the General Hospital, Rewari for further management as she was having 100% burns.

13. PW2 is Rajinder Singh, Draftsman, who had prepared scaled site plan Ex.PB of the place of occurrence on 18.10.1999.

14. PW3 is Charan Dass, father of deceased Smt.Mamta. He deposed that on receiving information that his daughter Smt.Mamta was burnt, he along with his wife and son had gone to Hospital Rewari and however, they came to know that his daughter was already referred to PGIMS, Rohtak and hence, they had gone to Rohtak and found that his daughter was crying with pain and that on enquiry she told that her mother-in-law Jamna Devi and sister-in-law Santosh and brother-in-law Ved Parkash had burnt her.

15. PW4 is Mrs.Shalini Nagpal, the then Chief Judicial Magistrate Ist Class, Rohtak, who recorded the statement of Smt.Mamta Ex.PC/5 on police request, as detailed above.

16. PW5 is Smt.Chanderkanta, mother of deceased, who corroborated the version of her husband Shri Charan Dass PW3. She further clarified that her daughter told them that she was set on fire by pouring kerosene oil by her mother-in-law Jamna Devi and sister-in-law Santosh, while Ved Parkash, her brother-in-law kept standing nearby.

17. PW6 is Puran Chand, photographer, who had taken photographs of the place of occurrence on police request, positives of which are Ex.P1 and P2 and negatives are Ex.P3 and P4.

18. PW7 is Jagat Raj, ASI, the Investigating Officer of this case, who first visited Civil Hospital, Rewari and when he came to know that

Smt.Mamta was already referred to PGIMS Rohtak, he visited PGIMS Rohtak and collected copy of MLR Ex.PE/1 and Ruqa Ex.PE. He gave application Ex.PF and obtained opinion of doctor Ex.PF/1 that Mamta was fit to make the statement and thereafter recorded her statement Ex.PG, on the basis of which formal FIR was got registered. He also called Mrs.Shalini Nagpal, the then Duty Magistrate and got statement of Smt.Mamta recorded under Section 164 Cr.P.C., as detailed above. He received Ruqa Ex.PH regarding death of Smt.Mamta at about 11.15 p.m. on that day. He recorded statement of father, brother and one of the relatives of Smt.Mamta. He got conducted post mortem examination on the dead body of Smt.Mamta. He also recorded statement of mother of Smt.Mamta on 12.10.1999.

19. PW8 is Ram Swroop, Head Constable, who had recorded formal FIR Ex.PG/2 on the receipt of Memo Ex.PG with endorsement of Jagat Raj, ASI from PGIMS Rohtak and sent the special report to Illaqa Magistrate.

20. PW9 is Dr.G.N.Aggarwal, Medical Officer, Civil Hospital, Rohtak, who along with Dr.O.P.Dhania, conducted the post mortem examination on the dead body of Smt.Mamta and observed as under:

> "Superficial to deep burn all over the body except a part of lower abdomen and pelvis and few patches elsewhere, about 96% area of burn was seen. Normal skin shows read line separately from burn area. Singing of hair of scalp with underlying ecchymosis was seen. There was soot carbon particles seen in trachea. External burn over the mouth was there."

21. He further deposed that in their opinion the cause of death was extensive ante mortem burns and their complications and that probable time that elapsed between death and post mortem was about 24 hours. He had proved carbon copy of post mortem report as Ex.PI/13 and deposed that the inquest papers Ex.PI/1 to PI/12 were also signed by him.

22. PW10 is Constable Naresh Kumar, who is a formal witness and who had tendered in evidence affidavit of his statement Ex.PJ.

23. PW11 is Constable Mangtu Ram, who had delivered special report of this case at the residence of the then learned Judicial Magistrate Ist Class, Rewari.

24. PW12 is SI Lal Singh, SHO, Police Station Sadar Rewari, who had prepared report under Section 173 Cr.P.C., after completion of the investigation of this case.

25. PW13 is Bhagat Singh, Sub Inspector, who was posted SHO, Police Station Bawal, and who had investigated this case after receiving message that Smt.Mamta had succumbed to the injuries. He had arrested all the three accused in this case on 7.10.1999.

26. PW14 is Dr.K.M.Mariya, Medical Officer, PGIMS Rohtak, who had medico-legally examined Smt.Mamta on 3.10.2000. He subsequently deposed that the patient had disclosed history of receiving burns by pouring kerosene oil by her mother-in-law and sister-in-law at her residence and that he had recorded the same in the MLR itself. He had proved carbon copy of MLR as Ex.PP.

27. Statement of all the accused in terms of Section 313 Cr.P.C. was recorded in which they denied the version of prosecution witnesses and

claimed trial.

28. Ved Parkash accused had taken the plea that the deceased Mamta consigned herself to flames as she was frustrated lover. He had further taken the plea that at the time of occurrence he along with his brother Madan Lal was present at his shop and that he used to live separate from his brother Madan Lal and was having separate ration card.

29. Smt.Jamna Devi, mother-in-law of the deceased had also taken similar plea that Mamta committed suicide. She also took plea that she was not present at her residence and that her daugther Smt.Santosh accused alone was in the house and that she was summoned from the house of Shri Shanti Swaroop Narula,Chairman of the M.C., Bawal and that when she reached Smt.Mamta was being shifted to Hospital Bawal.

30. Smt.Santosh accused had also taken the plea that Smt.Mamta committed suicide as she was in love with somebody and that she picked up a letter, which had slipped from possession of Smt.Mamta.

31. Accused examined as many as 6 DWs in their defence.

32. DW1 is Madan Lal, husband of deceased, who deposed that on 3.10.1999 at about 2.30 p.m., he along with his brother Ved Parkash accused were present at the shop when he came to know that his wife set herself on fire and hence he reached there and noticed that his wife was crying in kitchen at first floor of the house and was saying "**Mujhe Bachao, Galti Ho Gai"** (I be saved, I committed a mistake). He further deposed that he had taken his wife in a Maruti van to Civil Hospital, Bawal. He further deposed that his mother was not present in house when they reached there as she had gone to see wife of Shanti Swaroop, Chairman, who was ill.

He further deposed that on information being given by him, his mother-in-law and brother-in-law had reached General Hospital, Rewari, and that they accompanied them to PGIMS Rohtak and that however, on the way her mother-in-law pressurized Mamta that she should implicate everybody and that however, his wife continued to say that there was no fault of anybody. He also deposed that earlier as well there was some dispute between him and his in-laws and the same was compromised vide Ex.DB. In the cross-examination he also deposed that his sister Santosh was present at the house when they reached there.

33. DW2 is Sher Singh son of Mam Chand, who deposed that his shop is situated in front of the house of the accused and that on 3.10.1999, after hearing noise from the house of Madan Lal, he had seen a girl running towards the shop of Madan Lal and thereafter, Madan Lal and Ved Parkash reached there. They had taken Smt.Mamta to Civil Hospital, Bawal. He deposed that on her enquiry Smt.Mamta told him that she had committed a mistake. He also deposed that on the way to Rohtak, mother of Mamta was asking her that she should implicate her in-laws.

34. DW3 is Vijay Rustogi, Handwriting and Finger Print Expert, who deposed that he had compared disputed thumb impression on compromise Ex.DB with writing of Mamta taken from letters Ex.DC and from red diary Ex.DD and that in his opinion, the disputed signature on Compromise Ex.DB is signed by one and the same person Mamta, who had written the writing Ex.DC and DD.

35. DW4 is Naresh Kumar Chugh son of Shri Radha Krishan Chugh, in whose presence compromise Ex.DB was effected between parents

of Mamta and her in-laws.

36. DW5 is Manohar Lal son of Bodh Ram, another neighbour of the accused. He deposed that he had seen sister of Madan Lal weeping in front of her house. He also deposed that on her enquiry Mamta informed him that she had committed a mistake.

37. DW6 is Shanti Swaroop son of Shri Moti Ram, who deposed that on 3.10.1999, Smt.Jamna Devi was present in his house from 1.30 p.m. to 3.00 p.m.

38. Learned trial Court convicted and sentenced the accused aforementioned against which the present appeal has been filed.

39. We have heard learned counsel for the accused, learned Additional Advocate General, Haryana, and have gone through the whole record carefully.

40. It may be mentioned, at the very outset, that we have been informed that one of the accused, namely, Smt.Jamna Devi has already expired, hence, appeal filed on her behalf stands abated.

41. It has been argued by learned counsel for the appellants-accused that case of prosecution is based on dying declaration of the deceased and that however, dying declaration in this case cannot be believed as there are discrepancies in the different dying declarations and that the deceased was not mentally sound to make the statement as she had received 100% burns. He has argued that dying declaration is not a deposition in Court and that it is neither made on oath nor in the presence of accused nor its credence is tested by cross-examination and, hence, dying declaration should be subjected to close scrutiny. It has been argued that

Smt.Mamta died just after 15 minutes of the alleged dying declaration being recorded by the Magistrate and hence, it cannot be said that she was mentally sound to make the statement. It is further contended that in the dying declaration recorded by the ASI, she named her brother-in-law, Ved Parkash, whereas she did not name him before the Medical Officer and before the Magistrate. It is further contended that in her statement before the Magistrate Smt.Mamta gave date and time of occurrence as yesterday whereas the occurrence had taken place on the same day. It has further been contended that the dying declaration was the result of tutoring by mother of Smt.Mamta as she accompanied her from Rewari to Rohtak and that in fact Smt.Mamta committed suicide, as some letter written by her to her lover was found by her sister-in-law. He has placed reliance upon ***Dandu Lakshmi Reddi vs. State of A.P.*** 1999 (3) RCR (Criminal) 764.

42. He has further argued that so far as accused Ved Parkash is concerned, no role has been attributed to him by deceased and that merely because he was also present at the time of occurrence, it cannot be said that he shared the common intention with his co-accused to burn Smt.Mamta.

43. On this point he has placed reliance upon ***Suresh and another vs. State of U.P.*** 2001 (2) AIJ (SC) 160 and ***Mithu Singh vs. State of Punjab*** AIR 2001 Supreme Court 1929.

44. On the other hand, it has been argued by learned Additional Advocate General, Haryana, that all the three dying declarations are consistent so far as factum of setting the deceased Smt.Mamta on fire by Smt.Jamna Devi and Smt.Santosh is concerned and there is no material discrepancy in the three dying declarations. It is further contended that

mother of Smt.Mamta did not accompany her to PGIMS Rohtak and rather she along with her husband and son had directly reached Rohtak and hence, there was no question of tutoring of Mamta by her mother. It is further contended that dying declaration of Smt.Mamta is believable one as the same was given by her in the presence of her husband and she did not implicate her husband or any other member of the family. It is further contended that it was by slip of tongue that Smt.Mamta stated before the Magistrate that occurrence had taken place yesterday at 3.00 p.m., as admittedly the occurrence had taken place on 3.10.1999 at 3.00 p.m. It is further contended that husband of deceased is deposing falsely just to save his relatives after the death of his wife. Hence, it is argued that no reliance can be placed upon his testimony and other defence witnesses as no such version was given by husband of deceased to the police or to some other higher authorities after the occurrence.

45. In recent judgment rendered in ***Jaishree Anant Khandekar vs. State of Maharastra*** 2009 (3) RCR (Criminal) 765, Hon'ble Apex Court reiterated the principles for accepting the dying declaration under Section 32 of the Indian Evidence Act. Relevant paragraph of the same reads as under:

> "The judicially evolved rules of caution for acceptance of dying declaration have been stated by this Court in Paniben (Smt.) (supra), and in para Nos.18 and 19 of the said report, this Court has formulated several principles for accepting dying declaration, which have been laid down in various judgments of this Court in the last few decades. The principles stated in Paniben (Smt.) (Supra) have been again repeated by this Court in ***Shakuntala (Smt.) vs. State of***

Haryana 2007 (3) RCR (Criminal) 925: 2007 (4) RAJ 216: (2007) 10 SCC 168. The said principles are so salutary and cardinal in nature that they deserve to be reiterated and this Court does so herein below:

> "(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See Munnu Raja v. State of M.P., (1976(3) SCC 104)
>
> (ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration (See State of U.P. v. Ram Sagar Yadav and Ramawati Devi v. State of Bihar, 1985 (1) RCR (Criminal) 600 (SC).
>
> (iii) The court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. (See K.Ramachandra Reddy v. Public Prosecutor (1976 (3) SCC 618).
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> (iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See Rasheed Beg v. State of M.P. (1974 (4) SCC 264).
>
> (v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (See Kake Singh v. State of M.P., (1981 Supp. SCC 25).
>
> (vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (See Ram Manorath v. State of U.P., (1981 (2) SCC

654)

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (See State of Maharashtra v. Krishnamurti Laxmipati Naidu, (1980 Supp. SCC 455).

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (See Surajdeo Ojha v. State of Bihar, (1980 Supp. SCC 769))

(ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up the medical opinion. But where the eyewitness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. (See Nanhau Ram v. State of M.P., (1988 Supp.SCC 152)

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (See State of U.P. v. Madan Mohan, (1989(3) SCC 390)

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. (See Mohanlal Gangaram Gehani v. State of Maharashtra (1982 (1) SCC 700)"

13. In the light of the above principles, the acceptability of the alleged dying declaration in the instant case has to be considered. The dying declaration is only a piece of untested evidence and must, like any other evidence, satisfy the court

> that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration. (See Gangotri Singh v. State of U.P., Goverdhan Raoji Ghyare v. State of Maharashtra, Meesala Ramakrishan v. State of A.P. and State of Rajasthan v. Kishore.)
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> 14. There is no material to show that the dying declaration was the result or product of imagination, tutoring or prompting. On the contrary, the same appears to have been made by the deceased voluntarily. It is trustworthy and has credibility."

46. As the present case is based on dying declarations of the deceased given, firstly, before the Medical Officer at the time of her medical examination and thereafter before the ASI and thereafter before Judicial Magistrate Ist Class, we are to see by applying the aforementioned settled principles of law as to whether reliance can be placed upon the same or not.

47. In the present case, admittedly, the occurrence had taken place on 3.10.1999 at about 3.00 p.m. at Bawal. The injured was removed to Hospital Bawal by her husband Madan Lal. The Medical Officer at Civil Hospital, Bawal examined her and found that she was having 100% burn injuries and hence, she was referred to General Hospital Rewari for expert management and, accordingly, Ruqa Ex.PA was also sent to Police Station Bawal by the Medical Officer on 3.10.1999 at 4.10.p.m. From General

Hospital, Rewari, she was referred to PGIMS Rohtak, where she was examined by Dr.K.M.Mariya, PW14, vide MLR Ex.PE/1 at 7.45 p.m.. The deceased gave history before the Medical Officer as to how she sustained burn injuries in the presence of her husband and her mother and in the said history she stated that she sustained burns by pouring of kerosene oil by her mother-in-law and sister-in-law at her residence at 3.00 p.m. on 3.10.1999. It has been so deposed by Dr.K.M.Mariya. He also deposed that the patient was conscious. There is no delay in recording the version of the occurrence by the Medical Officer as given by the deceased herself and the same can be taken as the first dying declaration made by the deceased. There is nothing as to why Dr.K.M.Mariya, PW14, should have deposed falsely.

48. Initially the case was investigated by ASI Jagat Singh, PW7. On receipt of Ruqa Ex.PA from Civil Hospital, Bawal, he visited General Hospital, Rewari, and moved application PD before the Medical Officer and the Medical Officer made his endorsement on the application that the patient was already referred to PGIMS, Rohtak and hence, he reached Rohtak and collected Ruqa Ex.PE and copy of MLR Ex.PE/1. He gave application Ex.PF and obtained opinion of the doctor Ex.PF/1 to the effect that the patient was fit to make the statement and thereafter, he recorded the statement of Smt.Mamta, Ex.PG, on the basis of which FIR was got registered. In Ex.PG as well the deceased stated that she was set on fire by her sister-in-law Santosh and mother-in-law Jamna Devi, however, in the said statement she stated that her brother-in-law Ved Parkash was also present there. However, no role had been attributed by her to Ved Parkash in setting her on fire. The said statement was recorded at about 10.00 p.m.

Thereafter, he called learned Duty Magistrate to record the statement of the injured. Mrs. Shanti Nagpal, the then Judicial Magistrate Ist Class, Rohtak, PW4, deposed that application Ex.PC was moved before her by the police for recording the statement of Smt.Mamta. A perusal of Ex.PC shows that the same was given to her at about 10.00 p.m. on which she passed order Ex.PC/1. Immediately she reached Ward No.6 of PGIMS Rohtak, where patient was lying admitted. She deposed that she found Dr.Kul Bhushan on duty there. She passed order Ex.PC/2 seeking opinion of Dr.Kul Bhushan as to whether patient was fit to make statement. The opinion of Medical officer is Ex.PC/3 given at 10.20 p.m., that the patient was fit and conscious to give her statement. Learned Magistrate asked relatives, attendants and parents to go out so that she could conduct the proceedings and she passed order in this regard as well, which is Ex.PC/4. In Ex.PC/4, she specifically mentioned that she explained to Smt.Mamta that she was giving statement before a Magistrate and that she should give the statement freely and voluntarily, without any fear, pressure or undue influence. Thereafter, she recorded her statement on oath, which is Ex.PC/5, in which she reiterated her previous version that she was set on fire by her mother-in-law Jamna devi and sister-in-law Santosh. She specifically deposed that Smt.Mamta remained fully conscious and that the medical Officer also remained present there throughout the period of recording of her statement. She also obtained another certificate from the Medical Officer at the end of the statement of Smt.Mamta, which is Ex.PC/6 to the effect that the patient remained fit and conscious throughout the time, her statement was recorded. Thereafter, learned Magistrate appended Certificate, Ex.PC/7 that the

statement of Smt.Mamta was read over to her and she accepted the same as correct and that the same contains full and true account of what she said.

49. Hence all the three dying declarations are consistent on the point that Smt.Mamta was set on fire by her mother-in-law Jamna Devi and Sister-in-law Santosh. She was fit and conscious to make the statement. Merely on the ground that she succumbed to injuries at about 11.15 p.m., it cannot be said that Smt.Mamta was not fit and conscious to make the statement. Hence, ***Dandu Laxshmi Reddy's*** case (Supra), which has been relied upon by the counsel for the appellants-accused, is not applicable to the facts of the present case.

50. Further all the three dying declarations also find corroboration from deposition of parents of deceased, i.e., Charan Dass, father (PW3) and Smt.Chanderkanta, mother (PW5). Both of them also deposed that she used to be harassed by her mother-in-law, sister-in-law and brother-in-law, as she was not conceiving a child. They specifically deposed that on receiving intimation they reached General Hospital, Rewari and however, they informed that Smt.Mamta was already taken to PGIMS Rohtak, and hence, they had directly gone to Rohtak. They denied that they accompanied Smt.Mamta from Rewari to Rohtak. Immediately after reaching Rohtak statement of Smt.Mamta was recorded by the Medical Officer, as already discussed above. Hence, there was no occasion for parents of Mamta to have tutored her to give a particular statement implicating her in-laws.

51. Deposition of husband of deceased and the procured witnesses on the point that Smt.Mamta allegedly committed suicide and that she gave false statement due to tutoring of her parents cannot be accepted as the same

is an after thought version. The husband of the deceased did not give any application to any higher authority of the police or to the Magistrate that the statement given by Smt.Mamta was due to tutoring of her parents. No such application was also given to the village panchayat as well or to the Biradari Panchayat. It has come on the record that earlier Biradari Panchayat was held and the dispute was settled, however, after the death of Smt.Mamta nothing has come on the record that any such Biradari Panchayat was again convened.

52. Even as per version of the accused his sister Smt.Santosh was present in the house at the time of the occurrence and his mother was out of the house. Mother-in-law of deceased had also taken the plea that her daughter was present in the house at the time of occurrence, however, deceased was removed to Hospital by her husband alone. Mother-in-law and sister-in-law of the deceased did not accompany her. Though admittedly accused Santosh was present in the house, however, she did not sustain any burn injury on her hands. Had Smt.Mamta Committed suicide in her presence, she should have tried to extinguish the fire and she and her mother should have accompanied her being ladies to save her life.

53. Motive for the setting Smt.Mamta on fire by her mother-in-law and sister-in-law has also come in the statement of Smt.Mamta given before the Magistrate that they used to harass her and torture her as she was unable to bear a child despite the fact that six years had expired after the marriage and they were also suspecting that she was characterless. Even as per defence put up on behalf of the accused some letter, allegedly written by the deceased, fell into the hands of Smt.Santosh. She was having no grudge

against her husband and hence she did not name him. She also did not state that her brother-in-law Ved Parkash also participated in the occurrence, though in her statement given before the ASI she stated that he was also present. Hence, dying declaration given by Smt.Mamta in this case against her mother-in-law and sister-in-law inspires our confidence and the same is believable and the defence version put up on behalf of the accused that Smt.Mamta committed suicide cannot be accepted. Her husband was not annoyed with her. Her husband was not suspecting her to be of characterless. Her husband was not having any grudge against her on account of the fact that she could not bear a child. Hence, in view of this fact, merely on the ground that her mother-in-law and sister-in-law were not happy with her, there is nothing as to why she should have put to an end to her life herself.

54. Though plea has been taken that deceased and her husband used to live separate and that they were having separate ration card, however, no such documentary evidence has been produced on behalf of the accused, rather as per deposition of husband of deceased when he reached his house, he found that his sister was present there and that his wife had sustained burn injuries. As his wife had already expired and he is having no issue from his wife, he is now deposing falsely that his wife committed suicide just to save his mother, sister and brother. Hence, there is force in the argument of learned Additional Advocate General, Haryana, that no reliance can be placed upon his testimony and his procured witnesses who are his neighbours as the version given is an after thought version.

55. However, there is force in the argument of learned counsel for

the appellants-accused that even from the various dying declarations given by the deceased, no offence against Ved Parkash is made out. Smt.Mamta (deceased) had not attributed any role to him even in her statement before the ASI in which she named him for the first time. In her first dying declaration recorded by the Medical officer she did not name him. Even in her statement before the Magistrate, she did not name him and even if it is taken that he was also present there when Smt.Mamta was set on fire by her mother-in-law and sister-in-law, it cannot be said that Ved Parkash accused shared common intention with his mother and sister to set Smt.Mamta on fire.

56. In ***Mithu Singh's case*** *(supra),* Hon'ble apex Court observed that to substantiate a charge under Section 302 with the aid of Section 34, it must be shown that the criminal act complained against was done by one of the accused persons in furtherance of the common intention of the both and that common intention has to be distinguished from same or similar intention. It was further observed that merely on the ground that the co-accused was armed with a pistol and also had knowledge of previous enmity between co-accused and the deceased, inference that accused had common intention to kill cannot be drawn.

57. In ***Suresh and another***'s case (supra) it was observed by the Hon'ble apex Court that it is difficult to conclude that a person, merely because he was present at or near the scene of crime, without doing anything more, and without even carrying a weapon, could also be convicted with the aid of Section 34 IPC for the offence committed by the other accused.

58. As already discussed above, Smt.Mamta (deceased) had not attributed any role to Ved Parkash accused. She specifically stated in her dying declaration that she was set on fire by her mother-in-law and sister-in-law. Hence accused Ved Parkash cannot be held guilty for the offence with the aid of Section 34 IPC even if it is taken that he was present when Smt.Mamta was set on fire by her mother-in-law and sister-in-law.

59. In view of the above discussion, we are of the view that prosecution has failed to prove the offence against accused Ved Parkash beyond any shadow of doubt and hence by accepting his appeal, we acquit him for the charges framed against him by setting aside judgment of conviction and order of sentence passed against him by learned trial Court.

60. As already stated above, it was brought to our notice that Smt.Jamna Devi has since expired and hence appeal filed on her behalf stands abated.

61. However, so far as appeal filed by Smt.Santosh is concerned, we do not find any merit in the same. Hence the same is, hereby, dismissed and the judgment of conviction and order of sentence passed by learned trial Court against her is, hereby, upheld.

(Mehtab S.Gill)
Judge

(Ram Chand Gupta)
Judge

November 11, 2009
meenu

Note: Whether to be referred to reporter? Yes/No.